

24 FEB 2010

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In re Application of
Kano et al.
Application No.: 10/593,786
PCT No.: PCT/JP2005/006229
Int. Filing Date: 24 March 2005
Priority Date: 24 March 2004
Attorney Docket No.: 350292003100
For: Subtypes Of Humanized Antibody
Against Interleukin-6 Receptor

DECISION

This is in response to the petition under 37 CFR 1.181 filed on 04 December 2009.

BACKGROUND

This international application was filed on 24 March 2005, claimed an earlier priority date of 24 March 2004, and designated the U.S. The International Bureau transmitted a copy of the published international application to the USPTO on 29 September 2005. The 30 month time period for paying the basic national fee in the United States expired at midnight on 24 September 2006. Applicants filed *inter alia* the basic national fee on 22 September 2006.

On 27 June 2008, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed, requiring the submission of additional claims fees, an oath or declaration compliant with 37 CFR 1.497(a) and (b), the surcharge under 37 CFR 1.492(h), an initial computer-readable form (CRF) of the sequence listing, an initial paper or CD copy of the sequence listing, an amendment directing its entry into the specification, and a statement that the content of the CRF is identical to the written sequence listing and, where applicable, contains no new matter.

On 26 August 2008, applicants filed a response.

On 20 March 2009, a Notification of Defective Response (Form PCT/DO/EO/916) was mailed, requiring the submission of a substitute CRF and statement that the content of the CRF is identical to the written sequence listing and, where applicable, contains no new matter.

On 20 April 2009, applicants filed a response.

On 05 October 2009, a Notification of Abandonment (Form PCT/DO/EO/909) was mailed to counsel, indicating that this international application had become abandoned with respect to the national stage in the United States for failure to timely reply to the Notification of Missing Requirements mailed on 27 June 2008.

DISCUSSION

Counsel requests withdrawal of the holding of abandonment, noting that responses were filed on 26 August 2008 and 20 April 2009, and that "a notice indicating that our computer readable form (CRF) was defective was never mailed to us."

Review of the record reveals that the Notification of Missing Requirements mailed on 27 June 2008 required *inter alia* the submission of a CRF, within a period for response that ended as of midnight on 27 January 2009 (if maximally extended under 37 CFR 1.136(a)). On 26 August 2008, applicants filed a CRF, which was evaluated and found to be defective. Applicants were given an additional opportunity to file an acceptable CRF by the Notification of Defective Response mailed on 20 March 2009, which did not re-start the period for response. Instead, it set a one-month time limit to comply (since the extendable period for response to the Notification of Missing Requirements had already expired). Applicants filed a further CRF on 20 April 2009, the last day within said time limit, but this CRF was found to be defective. Therefore, this international application became abandoned for failure to timely reply to the Notification and Missing Requirements and the Notification of Defective Response. By policy, applicants were not entitled to a further opportunity to perfect their response, and the absence of "a notice indicating that our computer readable form (CRF) was defective" prior to the holding of abandonment does not constitute error on the part of the USPTO. Accordingly, it would not be appropriate to withdraw the holding of abandonment on the basis of the present record. Applicants may wish to consider seeking relief under 37 CFR 1.137(b).

DECISION

The petition is **DISMISSED**, without prejudice.

If reconsideration on the merits of this matter is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter may be filed electronically via EFS-Web selecting the document description "Petition for review and processing by the PCT Legal Office" or by mail addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

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